

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION No. 11156 of 2001****For Approval and Signature:****HONOURABLE MR.JUSTICE KSHITIJ R.VYAS****HONOURABLE MR.JUSTICE AKSHAY H.MEHTA**

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
 - 5 Whether it is to be circulated to the civil judge ?
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DULARAY SAKERCHAND GANDHI - Petitioner(s)

Versus

STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :

MR MD VAKIL for Petitioner(s) : 1,
Mr S P Hasurkar, Asstt.GOVERNMENT PLEADER for Respondent(s) : 1 - 2.
RULE SERVED BY DS for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE KSHITIJ R.VYAS

and

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 09/01/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA)

The only grievance that has been made by the petitioner in this

petition is that though the possession of his land was taken in the month of October, 1980 by making negotiations and without entering into an agreement with the petitioner and other similarly situated land owners, proceedings to acquire the same were initiated as late as in the year 1999 and notification under section 4 of the Land Acquisition Act (for short, 'the Act') was published on 27.8.1999 and at the end of the proceedings, the benefit under section 23 A of the Act with regard to payment of amount calculated at the rate of 12% per annum on the market value was made effective only from the date of publication of the Notification under section 4 of the Act and not from the date of taking over possession of the land in question.

2. The say of the petitioner is that his land bearing survey no.65-66 admeasuring 0-42-62 sq.meters was situated at village Kotarpur in Ahmedabad district. The said land was acquired for implementation of the public purpose namely; for constructing an approach road to the National High way. It is the say of the petitioner that the possession of the said land was taken by the respondents by negotiating with the petitioner and no formal agreement was entered into to give the legal effect for acquiring possession in the month of October, 1980. The respondents initiated proceedings under the Act by publishing notification

under section 4 of the Act. The same was published on 27.8.1999 and on completion of the proceedings award was made on 8.9.2000. It is the grievance of the petitioner that when the proceedings are initiated after such a long period, the respondents are required to pay benefit under section 23 A of the Act from the date of taking possession of the land and not from the date of publication of the notification under section 4 of the Act. In the instant case, respondent no.2 has made the award and granted interest on the amount of compensation w.e.f the date of publication of the notification under section 4 of the Act and not from the date of possession.

3. Mr M D Vakil, learned Advocate for the petitioner has submitted that when the possession of the land has been taken by the respondents way back in the year 1980, the petitioner is entitled to receive interest on the amount of compensation from the date of taking the possession and not from the date of notification under section 4 of the Act. In support of his submission, he has placed reliance of a circular dated 14.7.2000 issued under the signature of Section Officer, Revenue Department, Government of Gujarat. It relates to granting benefit under section 23(1-A) of the Act. It prescribes that wherever possession of the land has been taken without following the procedure under the Act, the claimant is required to be paid interest on the amount of compensation and other incidental amounts

from the date of negotiation of the proceedings under the Act. On the basis of this circular, Mr Vakil submits that this petition deserves to be allowed and the petitioner deserves to be granted benefit under section 23(1-A) of the Act from the date of taking possession of the land by the respondents and not from the date of publication of notification under section 4 of the Act.

4. This submission has been vehemently contested by Mr Hasurkar, learned AGP. He has submitted that the circular dated 14.7.2000 stands overruled by the subsequent notification or circular issued by the Government of Gujarat. He also placed on record copy of the said circular which is dated 14.3.2002. On perusing the said circular, it appears that the same is based on the decision of the Apex Court in the case of *Shri Sindappa Vasappa Kuri & Ors. v. Special Land acquisition Officer & Ors.*, in Special Civil Application No.1687/98. It is rendered by three learned Judges of the Supreme Court. The judgment of the Apex Court is dated 16.10.2001. In the said decision, it is decided that even in the case where possession of the land has been taken earlier than the date of publication of notification under section 4, the benefit under section 23(1-A) of the Act would be made available to the concerned claimant only from the date of publication of section 4 notification and not from the date of possession. Mr Hasurkar has cited the said judgment before us. On reading the said

judgment, it clearly appears that earlier circular dated 14.7.2000 which was based on the judgment rendered by the Apex Court in the case of *State of Himachal Pradesh v Dharam Das* (1995) 5 SCC 683 has been overruled. In the wake of the later judgment, Government of Gujarat has issued another circular dated 14.3.2002 which states that benefit under section 23 (1-A) of the Act should be made available to the claimant only from the date of publication of notification under section 4 of the Act. The Apex Court in the case of *Shri Sindappa Vasappa Kuri & Ors. v. Special Land Acquisition Officer & Ors*, (2002) 1 SCC 144 has observed as under:

“It is, as we see it, clear from section 23(1-A) that the starting point for the purposes of calculating the amount to be awarded thereunder, at the rate of 12 percentum per annum on the market value, is the date of publication of section 4 notification. The terminal point for the purpose is either the date of the award or the date of taking possession, whichever is earlier. In the present case, possession of the land having been taken prior to the publication of the section 4 notification, that terminal is not available. The only available terminal is the date of the award. The High Court, therefore, was in no error in holding that the appellants were entitled to the additional compensation under section 23 (1-A) for the period 8.3.1991 to 6.2.1993.

Section 23(1-A) admits of no meaning other than the meaning that we have placed upon it. There is no room here for any construction other than that given above. It is only where a provision is ambiguous that a construction that leads to a result that is more just can be adopted. Having regard to its clear terms, section 23(1-A) must receive the only construction it can bear. We are of the view, therefore, that the law has been correctly laid down in the decision in *Special Tahsildar (LA), PWD schemes v. M.A. Jabbar* and that it has not been correctly laid down in *Asstt.Commr. Gadag, Sub-Division v. Mathapathi Basavanneewa* and, for that matter in *State of H.P. v. Dharam Das*.”

In view of the same, it clearly appears that the submission of Mr Vakil cannot be accepted. The grievance made by the petitioner in this petition, therefore, cannot be redressed in view of the subsequent circulars of the Government. This petition, therefore, deserves to be dismissed and it is hereby ordered to be dismissed with no order as to costs. Rule discharged.

[Kshitij R Vyas, J.]

[Akshay H Mehta,J.]

msp